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The Reg Beagle

Vol. 48 No. 8

THE UNIVERSITY OF MICHIGAN LAW SCHOOL

March 18, 1998

Do We Need Reform in Career Services?

*Part I—U.S. News ranks Michigan Law
placement success at abysmal 19th*

By Sanjeev Date
RG Contributing Editor

The latest issue of the *U.S. News and World Report* Graduate School Rankings arrived on newsstands a few weeks ago. The University of Michigan Law School dropped from a solid #7 to an eighth-place tie with Duke University, the University of Pennsylvania, and the University of Virginia. The most interesting statistic is that the Law School failed to make the top 10 in only one category—Michigan had a #19 ranking in placement success.

Just to give a little perspective on how bad our placement success rank is, the following schools have a higher placement success rank than Michigan in this year's issue of *US News*: Yale, Harvard, Stanford, Columbia, Chicago, NYU, Boalt, Duke, Penn, Virginia, Cornell, Georgetown, Northwestern, USC, Vanderbilt, Minnesota, George Washington, and Brigham Young University. To give a little more perspective, this is the

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Photo by R. M. Lee

With a little bit of luck, this is a photograph of an endangered species.

Nine Down, Only 16 to Go

By Josh Turner
RG Contributing Editor

The computer saga continues. At press time, nine of the 25 new Dell computers are available for general student use. These machines are set up in the interviewing cubicles in Room 200. Several more are set up, but not ready to use, waiting for last minute details to be worked out. These should be available shortly.

Members of the information staff at the law school spent most of Winter Break setting the machines up, in conjunction with a Windows NT specialist from the University's Information Technology Division (ITD).

Ideally, the staff would like to develop a standard loadset for these machines, which could simply be copied onto each

one, reducing setup time dramatically. However, development of such a loadset is still presenting problems, so the seven computers which are currently set up had to be individually modified and set up. This is one reason for the delay in deploying the rest of the machines; the staff is hoping that a loadset can be developed shortly, so that the rest of the computers will not require individual set up. Unfortunately, there does not seem to be a definite schedule here, either—it is unknown when all 25 machines will be up and running.

The new computers are being set up in the cubicles in an attempt to prevent students from using them to the exclusion of

See COMPUTERS, page 12

U.S. News Rankings Come Under Fire

Michigan's drop in the rankings is not the only story to come from the latest issue of *U.S. News*. As important as the actual ranking is the controversy surrounding the popular and influential ranking. Shortly before the release of the 1998 rankings, the American Association of Law Schools (AALS) sent a letter to 93,000 law school applicants. This letter criticized the *U.S. News* ranking systems, and all ranking systems, for conveying misleading information about law schools. "The rankings leave many important variables out of account, arbitrarily weight others, and are generally unreliable as a guide to those qualities of different schools that a candidate should consider when applying to law schools." For example, the letter points out that *U.S. News* weighs the average LSAT score of a student body four times as heavily as the student faculty ratio; and posits, "Does this reflect [the applicant's] concerns?"

The AALS letter was signed by deans of 164 of the 180 ABA-accredited law schools, including the deans of 8 of the top 10 law schools in last year's ranking. Deans Robert Clark and Douglas Baird, of Harvard and Chicago, respectively, were notable absences. Dean Clark of Harvard did not sign because he believes in an independent ranking of law schools; Dean Baird of Chicago says he agrees with the "spirit" of the AALS letter, but did not sign the letter.

Dean Jeffrey Lehman of Michigan signed the letter. "Through venues such as the AALS statement," remarked the Dean, "I am continuing to participate in efforts to provide better and more useful information to potential students and to make that information more salient than the heavily marketed US News product."

US News issued a rebuttal to the AALS claim. "The magazine stands by its rankings and the methodology that was used in their development."

Career Services *Continued from page 1*

fourth issue of *U.S. News* in a row in which we have not finished higher than #15 in placement; this despite having never finished below the top five in "reputation among lawyers and judges."

For the 1998 issue of its Law School Rankings, *U.S. News* relies on employment statistics for the class of 1996. By *U.S. News* calculation standards, 16.3% of 1996 graduates were unemployed at graduation, and 8.3% of graduates were still unemployed by Feb. 15, 1997 ("9-months-post-graduation"). While the 1996 "at-graduation" rate pre-dates Susan Weinberg's arrival as the director of the current Career Services office, 60% of the ranking relies on the "9-month-post-graduation" employment rate. This 9-month period is in fact contemporaneous with the tenure of the current Career Services staff.

The placement statistics for the class of 1997 (which will be used in next year's issue of *U.S. News*), including the "at-graduation" and "9-month post-graduation" rates, do not predate the current Career Services office. And perhaps not surprisingly, the class of 1997 statistics are nearly as unimpressive as the class of 1996 stats; 15.6%—or 55 students—of the 1997 graduating class were unemployed at graduation, and 6.1% were still unemployed by Feb. 15, 1998. In the fall of 1997, Susan Weinberg described the modest increase (.7%) in "at-graduation" employment as being caused by "anecdotal circumstances" rather than significant improvements in the office. Said Weinberg, "some people's circumstances made them more likely to obtain employment than in years past." With such slight increases in employment, and since such increases were described as "anecdotal" rather than systematic, it is probable that the Career

Services office in its present form will not yield a significantly higher placement success rank in next year's issue or future issues of *U.S. News*.

While some aspects of our student body may conceivably contribute to these poor employment statistics (i.e. idiosyncratic career goals), surely the Michigan student body is not so deviant from that of other schools that these qualities alone can account for the poor placement record. Michigan Law School's consistently poor placement record is neither a fluke nor a statistical aberration, but is indicative of a systematic and pervasive weakness of our Career Services office that must be addressed and corrected by the administration and concerned students.

To be fair to Career Services, the Law School has been lauded for its geographically diverse placement. In a recent issue of *Of Counsel*, Michigan's placement success was praised as possibly the "most impressive" result among national law schools. Details of the *Of Counsel* article are available in the Career Services newsletter, as well as on the Law School's home page.

The *Of Counsel* article reinforces something that most students knew already, that Michigan has long been a school with a national reputation and geographically diverse alumni base. Notwithstanding this bit of success, it doesn't change Career Services' poor record at securing employment for our graduates. In fact, one might argue that the *Of Counsel* article is more evidence that Career Services' performance is unsatisfactory; despite our strong national reputation that works heavily to our students' advantage, Career Services is consistently unable to do the job that would place our school higher than 15th in the placement rank in

See CAREER SERVICES, page 12

For the next two issues, the RG will continue its investigation of Michigan's career services program. If you would like to comment, please contact Kris Lenart (lenartkl@umich.edu) or Sanjeev Date (sdate@umich.edu).

In addition, if you have questions or concerns about career services, please contact Dean Lehman (jlehman@umich.edu).

And, as always, the RG welcomes letters to the editor on this matter (and any other). Please submit them to Kris Lenart's pendaflex—sign them, please, although they can be published anonymously.

An Hour With the Supremes

Larry's D.C. Journal, Part I

By Larry Sager
RG Contributing Editor

Initially, it is the best entertainment in town and the most exciting thing one can do in Washington D.C., attend oral argument at the Supreme Court. This is an active court. It's helpful to know the facts and issues in the case beforehand, because you will not hear a neat, compact, complete recitation of them prior to the Justices firing their questions at the attorneys. Regardless, by close of the allotted one-hour time limit strictly enforced by the Chief Justice, you will know what the court's determination will hinge upon.

On the bench, the Chief Justice is seated in the middle, the Associate Justices seated according to seniority, alternating from left to right, with Breyer, the court's most recently appointed junior Associate seated on the far right. The audience faces the bench. So, the line-up from left to right: Ginsburg, Souter, Scalia, Stevens, Rehnquist, O'Connor, Kennedy, Thomas, Breyer.

This case: Caterpillar Inc. v. United Automobile, Aerospace and Agricultural Implement Workers, US SupCt, No. 96-1925. At issue, Section 302(a) of the Labor Management Relations Act (LMRA) prohibiting employers from paying union officials, versus Section 302(c)(1) which excepts payments made "as compensation form, or by reason of, service as an employee of such employer."

In accord with UAW contracts, companies cannot withhold pay (the "no-docking rule") from union members performing union duties where employees spend part of their workday on union business. Specifically in dispute are employees on Caterpillar's payroll elected to serve three-year terms, whose duties are to settle worker grievances and proceedings, or serve on joint labor-management committees to resolve disputes regarding working conditions.

In an unusual position, the employer, Caterpillar, claims that their own conduct of making payments to employees working full-time on workers' grievances violated the anti-bribery provision of the LMRA. Although collective bargaining agreements with the UAW provided for these payments, Caterpillar withheld the payments after a nationwide 1992 UAW strike. The Third Circuit determined the payments did not violate the LMRA.

Meanwhile, the UAW has 440 unfair labor charges on file against Caterpillar. The company has insisted workers crossing a workers' picket line during a recent strike be given amnesty while refusing to rehire 50 fired strikers.

In Court, numerous union folks were present. Sitting next to me, a former secretary for one of the attorneys arguing the UAW's position. Though unfamiliar with the issues in the case, she praised the attorney's

sharpness and expertise. She was there for the show, and the thumbs up, or thumbs down. I would concur: this is the best show in town, a feeling that will or will not stick with you depending upon your monetary, emotional, or moral investment in the issue at hand, and how your side fares through the one hour course of the encounter.

JUST ANSWER THE QUESTION. The Justices were relaxed, spoke in a most conversational manner, with the composure enjoyed by those having unremitted home field advantage. The attorney for Caterpillar spoke for about one minute, before Justice O'Connor interrupted, asking several questions in a row.

Next, Justice Scalia took over, questioning Caterpillar's attorney where the bright line might reasonably be drawn to determine when an employee has

Straight Shooting About the Curve

By Susan Foxman
RG Contributing Editor

How do professors determine grade curves? A straw poll found that most students answered this question differently, all the while standing firmly behind their unique answers. In response to this misunderstanding among students the RG decided to track down the real story on how faculty are suppose to curve grades across an entire class (though professors' methods for determining each individual grade may forever remain a mystery.)

The 1997-98 Faculty Handbook sets forth MLS's official policy on grading guidelines. The Handbook distinguishes between first-year courses, upper-level courses, and seminars. For both first-year and upper-level courses faculty are advised to grade to a target class mean of 3.19, with a target minimum mean of 3.13 and a target maximum mean of 3.25. While these target means are "only targets," faculty for first-year courses are advised to depart from these guidelines "only if justified by some unusual circumstances related to the particular class." Table 1 sets forth the target, minimum and maximum percentages of each grade for an entire class. Note that faculty are never required to give A+ grades, nor are they required to give grades lower than a C+.

Courses that deviate from these tar-

get numbers are reported by the Records Office to the Academic Standards Committee. Visiting faculty members tend to stray from these target numbers more than resident faculty.

The Handbook has not adopted a formal statement for seminar grading. Instead, it directs faculty grading seminars to look to tradition, stating that "the only method used to define the meaning of any particular letter grade in a seminar is by looking at past seminar grading patterns."

The Handbook acknowledges that seminar grades are usually higher than course grades. "During a typical term, the average grades for all seminars hover between a B+ and A-, with a majority of seminars reporting class averages closer to A-."

Whenever there is a mandatory curve, notwithstanding a degree of flexibility within that curve, students at the bottom are always going to feel bad. No student is able to get into MLS without be-

ing at the top of their previous academic institution's curve - but by definition some students are necessarily going to be at the bottom of MLS curves. While a mandatory curve might seem an unfair way to distinguish students, especially in a class where all the students perform well, Dean Whitman noted that "students do fall naturally on a spectrum." Until a better system for grading is found, and as long as employers are interested in relative success among students, we are going to have to live with the shortcomings of grade curves.



According to the Faculty Handbook faculty members must submit final grades to the Records Office no later than six weeks after the last day of exams. In May 1990, the faculty voted to impose upon itself a \$250 per day penalty for submitting final grades beyond the six-week deadline. Exemptions may be granted only by Dean Lehman.



A 2L searches the "Wailing Wall" for the magic "P."

Table 1.

| Grade | Min. % | Target % | Max. % |
|-------------|--------|----------|--------|
| A and A+ | | 10 | |
| A+ | 0 | | 3 |
| A | 7 | | 11 |
| A- | 13 | 15 | 17 |
| B+ | 26 | 30 | 34 |
| B | 21 | 25 | 29 |
| B- | 8 | 10 | 12 |
| C+ | 5 | 7 | 9 |
| C | 0 | | 5 |
| C and below | | 3 | |
| below C | 0 | | 4 |

Target, minimum, and maximum percentages for each grade, according to the faculty handbook.

THE FALL 1997 GRADE CURVE: ETHICAL DILEMMAS

THE WINNERS: *Criminal Appellate Practice*, Bennett/Steinberg: 3.68
Law, Medicine and Society, Schneider: 3.67

THE LOSERS: *European Tax Law*, Aujean: 2.94
 Both sections of *Legal Profession and Legal Ethics*
 Enker: 3.05, Pepe: 3.08

| Course | Professor | A+ | A | A- | B+ | B | B- | C+ | C | C- | D+ | D | D- | E | P | Total | GPA |
|----------------------------------------|-------------------|----|-----|-----|-----|-----|-----|-----|----|----|----|---|----|---|-----|-------|------|
| Civil Procedure I | Cooper | 3 | 6 | 14 | 24 | 21 | 10 | 7 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 88 | 3.18 |
| Civil Procedure I | Schacter | 0 | 7 | 11 | 29 | 25 | 11 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 86 | 3.21 |
| Civil Procedure I | Beckerman | 2 | 8 | 14 | 23 | 25 | 11 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 88 | 3.23 |
| Contracts | Pooley | 1 | 10 | 17 | 29 | 20 | 4 | 9 | 4 | 0 | 0 | 1 | 0 | 0 | 0 | 95 | 3.19 |
| Criminal Law | Kamisar | 1 | 8 | 11 | 24 | 15 | 9 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 74 | 3.22 |
| Criminal Law | Berman | 2 | 7 | 14 | 25 | 20 | 10 | 8 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 87 | 3.20 |
| Criminal Law | Westen | 2 | 7 | 14 | 29 | 21 | 8 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 88 | 3.24 |
| Intro to Con Law | Regan | 1 | 8 | 17 | 27 | 21 | 9 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 5 | 93 | 3.26 |
| Property | Heller | 2 | 9 | 13 | 25 | 21 | 9 | 5 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 86 | 3.23 |
| Property | Kauper | 0 | 5 | 5 | 14 | 8 | 6 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 42 | 3.19 |
| Property | Schneider | 0 | 4 | 5 | 13 | 11 | 6 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 45 | 3.11 |
| Property | Miller | 1 | 7 | 10 | 25 | 22 | 8 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 79 | 3.20 |
| Torts | Croley | 0 | 6 | 11 | 25 | 33 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 85 | 3.21 |
| Torts | Levmore | 1 | 10 | 15 | 25 | 17 | 11 | 5 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 87 | 3.22 |
| Torts | Clark | 2 | 6 | 12 | 29 | 27 | 7 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 87 | 3.24 |
| Torts | Whitman | 1 | 9 | 13 | 24 | 24 | 8 | 7 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 89 | 3.18 |
| Administrative Law | Croley | 0 | 7 | 8 | 20 | 20 | 12 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 43 | 111 | 3.20 |
| Business Planning | Moscow | 0 | 1 | 6 | 13 | 8 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | 42 | 3.27 |
| Commercial Transactions | J.J. White | 1 | 5 | 9 | 18 | 14 | 7 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 29 | 86 | 3.24 |
| Intro to Con Law And Amer. Legal Proc. | Regan | 0 | 7 | 16 | 7 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 37 | 3.55 |
| Copyright | Reichman | 3 | 12 | 9 | 25 | 17 | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 33 | 106 | 3.37 |
| Criminal Appellate Practice | Bennett/Steinberg | 0 | 4 | 6 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | 3.68 |
| Criminal Justice | Kamisar | 2 | 10 | 19 | 34 | 25 | 6 | 8 | 2 | 0 | 0 | 0 | 0 | 0 | 18 | 124 | 3.25 |
| Criminal Procedure | Gross | 2 | 13 | 24 | 21 | 26 | 8 | 5 | 3 | 3 | 0 | 0 | 0 | 0 | 3 | 108 | 3.25 |
| Enterprise Organization | Vining | 1 | 10 | 14 | 26 | 20 | 6 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 31 | 110 | 3.33 |
| Enterprise Organization | Levmore | 0 | 7 | 12 | 27 | 24 | 8 | 4 | 0 | 0 | 0 | 0 | 0 | 1 | 50 | 133 | 3.18 |
| Law and Medicine | Schwartz | 1 | 4 | 2 | 9 | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 28 | 3.35 |
| Evidence | Lempert | 2 | 11 | 16 | 16 | 15 | 5 | 5 | 3 | 3 | 2 | 0 | 0 | 0 | 19 | 97 | 3.18 |
| Federal Antitrust | Kauper | 1 | 13 | 19 | 36 | 31 | 14 | 8 | 1 | 0 | 0 | 1 | 0 | 0 | 22 | 146 | 3.21 |
| Federal Courts | Sandalow | 0 | 3 | 4 | 9 | 9 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 24 | 56 | 3.13 |
| Environmental Law | Pedersen | 0 | 2 | 0 | 6 | 6 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 19 | 36 | 3.13 |
| First Amendment | J.B. White | 2 | 6 | 12 | 16 | 11 | 5 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 9 | 67 | 3.27 |
| Euro Tax Law | Aujean | 0 | 0 | 2 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 2.94 |
| Internat'l Law | Simma | 0 | 6 | 9 | 1 | 7 | 3 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 17 | 46 | 3.32 |
| Jurisdiction | Reimann | 1 | 6 | 7 | 15 | 12 | 4 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 8 | 55 | 3.29 |
| Internat'l Trade | Jackson | 1 | 4 | 9 | 14 | 13 | 4 | 4 | 3 | 0 | 1 | 0 | 0 | 0 | 30 | 83 | 3.13 |
| Labor Law | Malamud | 1 | 6 | 9 | 18 | 14 | 6 | 4 | 1 | 2 | 0 | 0 | 0 | 0 | 13 | 74 | 3.18 |
| Japanese Legal Syst. | Kinami | 0 | 6 | 5 | 9 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 26 | 3.58 |
| Japanese Law: Current Issues | Ota/Kashiwagi | 2 | 4 | 0 | 6 | 8 | 0 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 26 | 3.18 |
| Employee Benefits | Muir | 1 | 3 | 5 | 10 | 6 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 10 | 38 | 3.32 |
| Modern Legal Theory | Soper | 1 | 3 | 10 | 11 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 38 | 3.46 |
| I.P. in Internat'l Trade | Reichman | 2 | 4 | 3 | 3 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | 29 | 3.60 |
| Legal Prof. and Legal Ethics | Pepe | 0 | 3 | 7 | 11 | 12 | 4 | 3 | 0 | 0 | 1 | 0 | 0 | 1 | 17 | 59 | 3.08 |
| Legal Prof. and Legal Ethics | Enker | 0 | 1 | 1 | 3 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 13 | 3.05 |
| Partnership Tax | Kahn | 1 | 3 | 4 | 2 | 3 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 7 | 22 | 3.29 |
| Securities Reg. | Beckerman | 1 | 8 | 8 | 16 | 16 | 7 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 68 | 3.28 |
| Sex Equality | MacKinnon | 1 | 11 | 24 | 35 | 41 | 4 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 39 | 160 | 3.28 |
| Tax I | Logue | 1 | 6 | 13 | 25 | 24 | 9 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 26 | 107 | 3.23 |
| Tax I | Roin | 0 | 2 | 8 | 10 | 9 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 17 | 50 | 3.28 |
| Trusts & Estates I | Waggoner | 2 | 9 | 20 | 27 | 24 | 7 | 6 | 2 | 0 | 0 | 0 | 0 | 0 | 16 | 113 | 3.26 |
| Trusts & Estates II | Waggoner | 1 | 1 | 1 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 3.51 |
| Law, Med. & Society | Schneider | 0 | 3 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 3.67 |
| Sex. and the Law | Ettlebrick | 2 | 1 | 2 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | 3.56 |
| Real Estate Transactions | Mann | 2 | 10 | 11 | 24 | 19 | 5 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 14 | 88 | 3.32 |
| OVERALL | | 54 | 332 | 532 | 922 | 802 | 281 | 156 | 50 | 13 | 7 | 2 | 0 | 2 | 571 | 3,724 | 3.27 |

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Supremes

Continued from page 3

spent too much time resolving work-place grievances before it becomes unlawful for the company to retain this person on the payroll. Justice Stevens asked if a person who worked only two days for Caterpillar could then take paid leave to settle grievances. Surprisingly evasive, Caterpillar's attorney would not answer the questions.

Scalia essentially repeated his question. Displaying the classic symptoms of commitment-phobia, the attorney rambled on about "slippery slopes," preferring the Justices draw this arbitrary line on their own, one that might potentially save the company up to two million dollars by allowing the company to pay new hires less, junk those provisions in collective bargaining agreements, and limit other industries as well. (Caterpillar employs about 12,000 union workers, who during the last 6 1/2 years have been locked out, struck twice, and returned to work without a contract).

Exasperated, Scalia began asking the attorney more specific hypotheticals. Would it be lawful for a shop steward to quickly discuss a grievance with an employee on company time? "He might spend the whole day?" asked Scalia. "A whole year?" Caterpillar's attorney reluctantly admitted a brief discussion would be acceptable, otherwise "it would depend."

Scalia seemed equally interested in making side-jokes with Stevens, (seated next to him), as much as finding the bright line indicating an employee has spent too much time on grievance resolution. Scalia was making points for the union's side, trying to elicit a response from Caterpillar's attorney to aid his dissent/anti-union argument in chambers. Perhaps that's what he whispered to Stevens, "I'm just trying to help this guy out!"

TAKING IT PERSONAL. It appeared for the first ten minutes that no other Justices would speak, but even Rehnquist awoke. He got up and left the bench—briefly, then returned. Eventually, all but one of the Justices engaged. Justice Thomas never uttered a word. Apparently he has slept through most every argument to come through the chamber.

Justices Kennedy, Souter, and Breyer

were scholarly and articulate. Ruth Bader Ginsburg's voice . . . is distinctive. She appears to focus more upon the legal analysis of the case compared with a practical and less formal approach of the others. Evidenced among all, their concerns regarding the future impact of this decision and its congruence with the court's prior decisions.

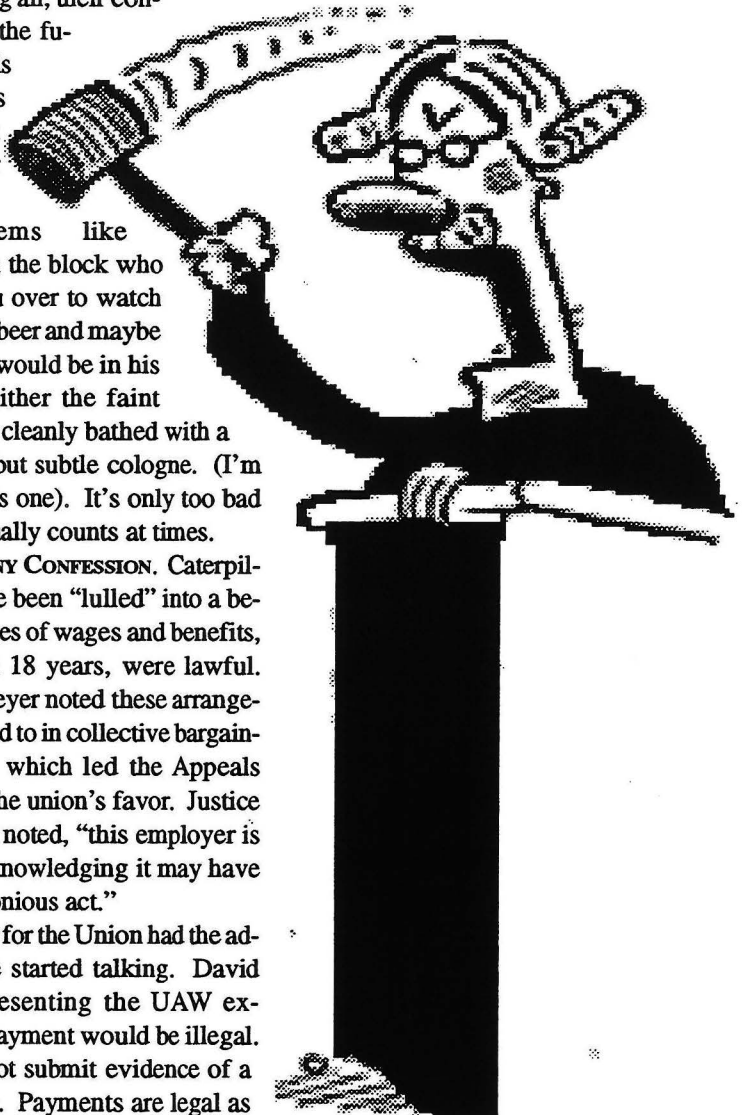
Scalia seems like a neighbor down the block who would invite you over to watch the game, have a beer and maybe some pizza. He would be in his bathrobe with either the faint scent of B.O., or cleanly bathed with a nice expensive, but subtle cologne. (I'm undecided on this one). It's only too bad that his vote actually counts at times.

THE COMPANY CONFESSION. Caterpillar claims to have been "lulled" into a belief that these types of wages and benefits, paid for the last 18 years, were lawful. Ginsburg and Breyer noted these arrangements were agreed to in collective bargaining agreements, which led the Appeals Court to rule in the union's favor. Justice Ginsburg further noted, "this employer is coming forth acknowledging it may have engaged in a felonious act."

The attorney for the Union had the advantage, until he started talking. David Silberman, representing the UAW explained a sham payment would be illegal. Caterpillar did not submit evidence of a sham transaction. Payments are legal as long as they serve a legitimate employee interest, in this case to accommodate and manage grievances conveniently on the shop floor. He also pointed out that it was advantageous to have former employees settle disputes between the employees and the employer because their familiarity with the plant makes them more qualified. The Justice Department filed an amicus brief siding with the UAW, pointing out during oral argument that an employee working on union business and paid an incommensurate amount, would be suspicious.

IN CLOSING. Arguably, the Justices' minds were basically set prior to the beginning of the arguments—a complicated

game of chess-match-espionage with numerous different sides, but you don't know who exactly is on which side. Walking out of the courtroom, a 6-3 deci-



sion seemed eminent, in favor of Caterpillar. However, in retrospect, Scalia might reason an employer should be free to negotiate terms of employment—two more votes for the Union, and at that point, perhaps the court would work for a unanimous decision in favor of the Union. That prediction covers most bases . . .

Regardless, I literally sat on the edge of my seat for every second, getting familiar with the eight Justices' voices, trying to take in every mannerism and nuance. It was absolutely fascinating.

The Res Gestae

Editor-in-Chief:

Kris Lenart

Managing Editor:

Rebekah Harvey

News & Politics Editor:

Michael Sachs

Business Manager:

Laura Ricketts

Layout Editor:

Nate Jamison

Photographer:

R. M. Lee

Contributing Editors:

Chris Butler

Matt Carlin

Sanjeev Date

Lisa Dresner

Susan Foxman

Rick Lee

Paul Luongo

Bruce Manning

Rachel Preiser

Larry Sager

Josh Turner

Editor-in-chief emeritus &

Snappy Dresser:

Jason Sanders

The *Res Gestae* is published biweekly during the school year by students of the University of Michigan Law School. Opinions expressed in bylined articles are those of the authors and do not necessarily represent the opinions of the editorial staff. Articles may be reprinted without permission, provided that the author and the *Res Gestae* are credited and notified.

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Mailing address:

The *Res Gestae*

The University of Michigan Law School
Hutchins Hall

Ann Arbor, MI 48109

Phone: (313) 998-7976

E-Mail: rg@umich.edu

URL: <http://www.law.umich.edu/pubs/rg>

**you have the right not to remain silent.
write to us:
rg@umich.edu**

O p i n i o n

Another season of spring on-campus interviews has come and gone, and a few lucky 1Ls probably got jobs out of it all. For most first year students, however, the excitement of paying a couple hundred dollars for a suit and then risking its immediate destruction by changing in a bathroom stall has worn off and they find themselves in the same position they were in before interviews started—unemployed.

The main problem with the spring interviews is that most of the firms willing to come all the way to Ann Arbor to interview 1Ls are only looking to hire a handful of students from all of the schools they travel to. Given this fact, one must wonder why the firms bother to travel here at all. Wouldn't it be easier just to request resumes and transcripts? Of course, the firms are hoping to get a preview of the crop they will be recruiting in the fall, and students should take the same approach. Consider these to be firm tryouts for fall interviews, when your choices will be limited in number and your time extremely valuable.

There are other benefits of the spring interviews. It gives 1Ls a glimpse of what is to come next fall, and helps them get familiar with the process (like learning how the light board in Room 200 works and then learning that none of the interviewers understand how to use it correctly anyway).

The spring interviews are beneficial as a whole as long as students keep a proper perspective about it, seeing it as a good opportunity but a long shot. First year students need to understand that they can't rely on on-campus interviews to find them a job. They should also know that there is still plenty of time to land a rewarding and valuable summer legal experience.

Response to Our Call for Letters on Affirmative Action

To the RG:

One issue about the Law School's Affirmative Action policy has troubled me—the Law School insists that it only admits qualified applicants, and yet certain aspects of the MAP program would suggest otherwise. I recognize that the MAP program is supposed to help minority students adjust to a traditionally white institution. This is a perfectly honorable goal. However, it is my understanding that the MAP program also offers programs on how to prepare for classes, how to prepare for exams, and even has Law School professors provide special instruction on how to take exams. How can the Law School justify providing special and additional academic programs exclusively for a limited group of students—the same group of students that the Law School insists are equally qualified as those non-minority students who are not allowed to attend MAP meetings?

Thank you for providing a forum in which I can raise this query. I have been wondering about this issue for along time, however I have not found a place where I felt comfortable discussing my perceived inconsistencies of the Affirmative Action issue and the MAP group. Additionally, I have found that many members of the law school, students included, are unwilling (or perhaps not allowed?) to discuss any aspect of the MAP program with a non-minority student. I hope your readers will respond and help further this discussion. If nothing else, I hope someone will clear up any misunderstanding I may have about this elusive program.

Signed,

Anonymous

[Editor's note- We welcomed questions and comments and are absolutely thrilled to pieces that someone actually wrote us... Unfortunately, we don't have the answer to this inquiry. We would really appreciate a response from someone in the law community who could answer this question. Thank you.]

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H E L P A T E V E R Y T U R N



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Judge for yourself: Interview hell extends way beyond campus

By Brian Donadio
Special to the RG

Interviewing for a judicial clerkship position was a strange experience. In a matter of three days I felt accomplished, exhilarated, discouraged, inadequate and, in the end, just plain irritable. In order to inform those considering this process for next year, and maybe help some who endured it this year feel a little more typical (which I did not when it was happening), allow me to contrast three interviews.

First day. Bright-eyed and ready to astonish the judicial scene, I entered my first interview fully prepared. In fact, I already knew it would seem quite brief—too brief to the uninformed—because I had spoken to a current clerk who pointed out that the judge would only interview me for 20 minutes at most (he is a model of efficiency). After being asked about my family history (neither the clerk nor I could figure out the purpose of this question—maybe to set the interviewee at ease?),

LSAT and SAT scores, and undergraduate grade history, I was permitted a few choice inquiries of my own, then whisked away to a clerk for some honest information. Grand total interview time—40 minutes. Important note—find out about the interview style of the judge before interviewing, because if I did not know the interview would be so short, I would have believed my inadequate interviewing skills to be the cause.

Second day. Having failed to learn interview style of Judge #2, I entered my second interview with a bit of apprehension. I had read about the judge and perused much of his writing (somewhere along the way I was told that was a good idea, and it did pay off a bit in each interview), so I felt I could handle whatever he could throw at me (I even knew what his favorite hobby was). Well, I was wrong. Not that I could not handle what he said or asked, but rather he would not really answer any of my questions. (For example

—Brilliant Question #1 . . . Answer—No (this Q & A has historically eaten up at least five minutes of any interview). Brilliant Question #2 . . . Answer—We get a good mix, and no, I do not have a preference. And so it continued. Well, continued is a strong word, because out of the 45 minutes I was allotted, I spent 5 waiting for him, 10 waiting for his clerks to return for lunch, 10 minutes with the clerks, and 20 minutes with him (split into two sessions, interrupted when he went to a brief meeting). In addition, the judge was eating lunch (and seemed more interested in it than in speaking to me), and had his office window open, thus forcing me to scream across the room to him over the rather noisy street traffic (yes, he stood across the room and said “What? I cannot hear you.”). Was this judge testing me, or did he just want to waste my time (he acted in the same manner from minute

See CLERKSHIP, page 12

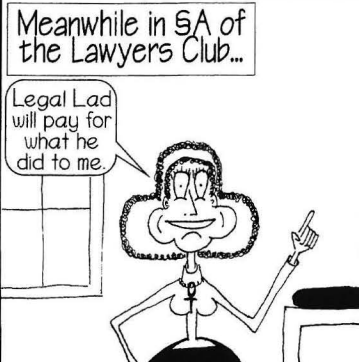
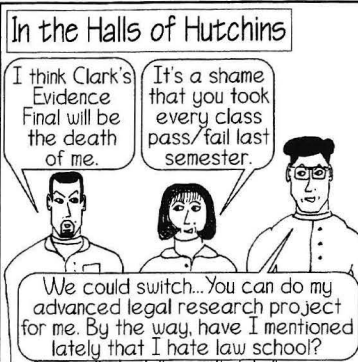
The Studies of Legal Lad 2-L

By Matt Carlin, 2.75-L

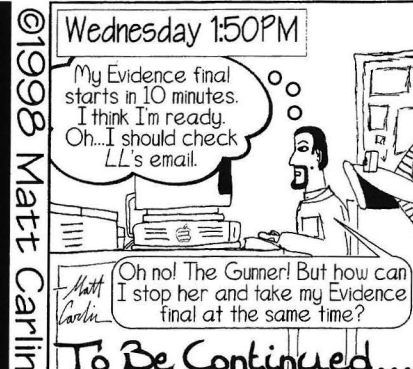
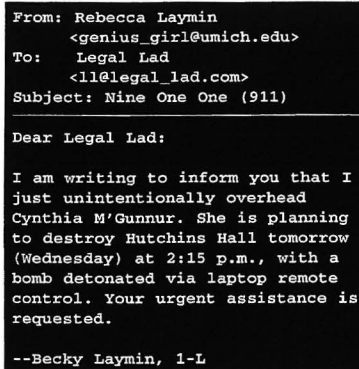
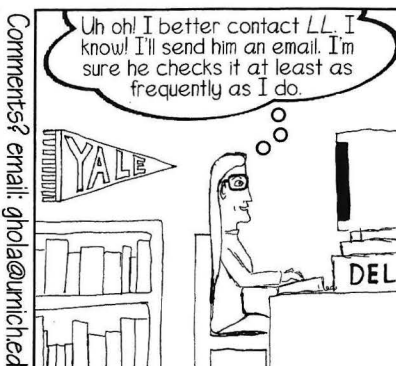
The CENSORED of Legal Lad

Chapter 1 of 3: DANGER

Text created on an Apple Macintosh. Computer



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SYRRAL
DLROW

By Larry Sager
RG Contributing Editor

I'm no longer at the pigs' house. Did a brief transitional stint at my buddy's place, Dick Armey, awaiting to move into my own digs. Dick loves company. Dick loves law students and swells with pride whenever he gets a chance to talk one-on-one. But after a couple of days it was too much. His blabbering on about lowering the minimum wage to \$3.40 so his favorite burger joint could hire more "pimpily pus-ridden teenagers" because "those fast food places just ain't fast no more." I pretended to excuse myself to go to the bathroom, went into the next room, hurriedly packed my bag and left. As I quietly closed the door behind me, he was still muttering about convicted sex offenders buying up the "good seats" at Dallas Cowboy's games and "blocking everyone's view in those god-damn trench coats when the cheerleaders start up."

Those minty breath drops . . . for breath-conscious folks trying to rid themselves of last night's Pad Thai, or perhaps just a lingering odiferous redolence from licking the carpet. Those drops initially smell like alcohol, so either people are going to think you've got lovely breath, or that you've been drinking vodka at 9 in the morning. Better, I guess, than if they think you've been drinking from the toilet.

Rip-off or tribute? (From his new album) Joe Satriani's *Trundrumbalind* v. Hendrix's *Third Stone From the Sun*. But *Raspberry Jam Delta* is hot.

And . . . my first White House assignment! Working on the [REDACTED] file, a [REDACTED], absolutely secret and highly confidential [REDACTED] that [REDACTED] and

[REDACTED] especially intended for [REDACTED]. High profile [REDACTED] in [REDACTED] which could have serious [REDACTED] or [REDACTED] if not [REDACTED] of [REDACTED] causing obvious [REDACTED] [REDACTED] for countries such as [REDACTED], [REDACTED], and for several people living in Parma, Ohio. Of course, the [REDACTED] said that the [REDACTED] who were [REDACTED] would never [REDACTED] once [REDACTED] got [REDACTED]. So you can see why this would [REDACTED].

I can also tell you about the Old Executive Office Building where I work: the architecture is phenomenal, at night the building is lit from the outside, breathtakingly gorgeous. It reminds me of Disney Land's haunted house only about 25 times larger—a grand old Victorian building. Inside, you can visit room 178 where Rosemary Woods assumed the infamous advanced yoga position while creating the 18-minute gap on the Watergate tapes. Watergate is burned into the memory glands of all good Nixonite-Republicans, still foraging about in the White House bushes, obsessed with uncovering the Democrats' "Watergate." In the last three years, \$144 million and some change has been spent trying to create it.

I Buried Paul . . . Turn Me On Dead Man. People are now playing [REDACTED] statements backwards to find their hidden meaning. [REDACTED] statement "[REDACTED]"

[REDACTED]

"Some are claiming that when you play this statement in reverse (preferably after a couple of Slammers) it becomes [REDACTED]." Then listening to [REDACTED]'s comment, "[REDACTED]"

In reverse, this becomes "[REDACTED]"

Rush Limbaugh's head is so far up his ass that he doesn't need to run these statements backwards. He hears them like that already . . . Ypppsnarf yuuuuullllleeeeeeee aarght . . . Regardless,

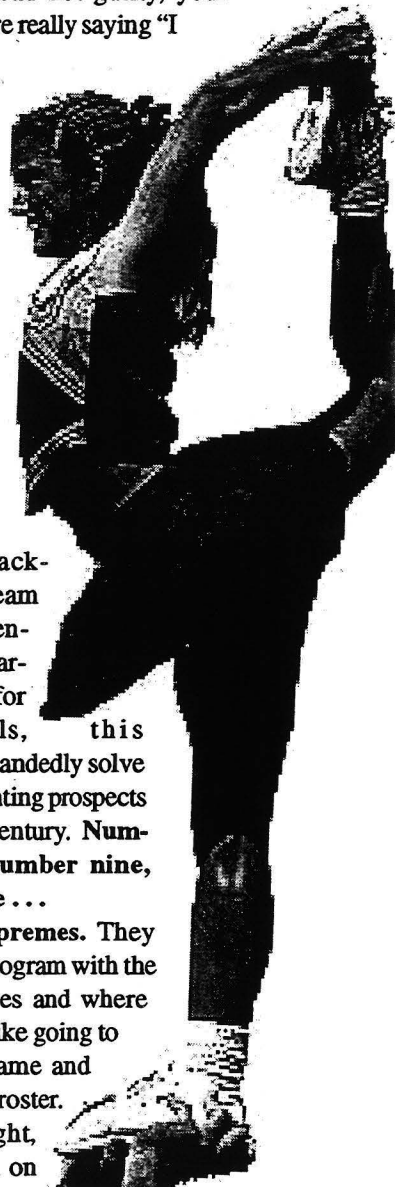
soon, lawyers will be sitting in front of tape machines, listening to statements played backwards at various speeds to see what is really being said. Just think how many extra attorneys are going to be needed for that.

Defendant: But I didn't do it. Can't I plead not guilty?

Attorney: The problem is that when we play back your statement in reverse saying "I plead not guilty, your honor," you're really saying "I killed him with my hammer." You plead guilty you lying son-of-a-bitch, or you can go find yourself another lawyer...

Next, people will be reading contracts backwards to gleam the true intentions of the parties. A boon for law schools, this could singlehandedly solve future job hunting prospects for the next century. **Number nine, number nine, number nine . . .**

The Supremes. They hand you a program with the Justices names and where they sit. It's like going to a baseball game and checking the roster. Height, weight, who put him on the team, how long they been playing, and the program even lists their nicknames: "Sleepy," "Sparky," and "Long Dong." It's a combination tourist attraction/entertainment extravaganza/serious legal exercise—all



Computers

Continued from page 1

the older terminals. While the ancient 386 and 486 units cannot reliably be used for surfing the web, and word process only with great reluctance, they are marginally capable when it comes to e-mail. It is hoped, therefore, that students who merely wish to check their e-mail will use one of the older terminals, especially considering that there are only seven of the new machines.

Eventually, some of the older machines will be moved down to the lounge near the Pendaflexes, which should clear up some of the traffic in Room 200. Once set up down there, the machines will be configured as e-mail only stations. Again, a timetable for this move is elusive. It appears that this restructuring is dependent on getting all 25 of the Dells up and running, and addressing some concerns related to maintenance, such as soda and/or food being spilled on or near the machines.

In the meantime, students should feel free to use the new Macintoshes, which have had none of the set-up problems that the Dells have encountered.



Career Services

Continued from page 2

U.S. News.

It is imperative that students get involved with the effort to reform and improve Career Services. Dean Lehman has expressed his concern over our poor placement showing by encouraging students to meet with him or Susan Weinberg.

In addition, the RG strongly encourages students to fill out the Career Services surveys which will be pendaflexed later this week. We want to know what stories,

either good or bad, you have about Career Services. We also want to know in what ways you think Career Services is doing a good job, and in what ways it can be improved. Students have the administration's ear right now; it's unclear how long we can have the Dean's attention unless we strongly voice our concerns immediately.

In future issues of the RG: The administration's response, student responses, and a comprehensive look at the successful New York University Placement Office.



Clerkship

Continued from page 10

one of the interview, so I am certain I did not do anything to irritate him)? At this point, do I care? I guess I would if I wanted to punish myself for a year.

Third day—NO, I was not really in the mood for the third interview. I know you may find it surprising, but I had plans for the federal judiciary at that point that did not include interviewing (except with the tables turned, and maybe some cement boots for the interviewee). I did not even worry about how the interview would go. Well, take heart, because our hero (my word) was pleasantly surprised on day three. Almost two hours of pleasant, en-

gaging, intelligent conversation with a judge and two bright, sociable clerks. I was floored. This was what it was all supposed to be about—an enriching exchange to see how the judge and applicant fit. Neither the assembly line approach nor the "let us see how much abuse you can endure" approach seemed at all worthwhile in comparison to the interview conducted by Judge #3. And, as a bonus, I left feeling that, regardless of the outcome, Judge #2 really did have some serious issues to address.

So there it is, three judges, three approaches, and none of my damage is apparent to the naked eye. It certainly could have been worse.



s'yrrol dlroW

Continued from page 11

rolled into one.

Perhaps those uninvolved in the law would not find it as fascinating as I do. Of course, for my first visit, if I had stronger feelings about the issue being argued I might be more critical. Grand entertainment. And by the way, chew gum, talk, or stick something in your mouth, and you will get booted out of there. Actually, the clerks for the Justices were the most disruptive of anyone in the room. I would have liked to have seen a couple of their sorry-asses booted out of there.

And even though he appears dead, Rehnquist manages to make his opinions known. However, my impression is that if you were to ask Rehnquist, "How's it going?" He'd say "I'm tired of all this bullshit." He looks it. But, I can't forget his personal goal: to dismantle the Fourth Amendment. And I haven't found that very funny.



Eight things we'd love to see auctioned off at the SFF auction

1. From Jim Krier—an autographed copy of Dukminier's Gilbert's *Property* outline
2. A guest appearance in *Legal Lad*
3. One of Dean Lehman's kids to do your homework for a week
4. A class with a real Michigan professor
5. A license to shoot random undergrads in the Reading Room
6. A Student Funded Fellowship
7. A parking space in the faculty lot
8. Ben Franklin Bank

ANSWER SHEET

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Westlaw® is currently sponsoring a competition that asks law students to write an essay on making KeyCite even better (and if you've worked with KeyCite, you *know* there's a lot of room for improvement). To help your chances of winning, you'll find several "key" deficiencies below. Meanwhile, here's another winning suggestion for you:

Send your ideas on improving KeyCite to LEXIS-NEXIS. We'll enter you in a drawing to...
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Have KeyCite provide thorough editorial analysis
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SUGGESTION #4

Have KeyCite provide point-of-law analysis for
 non-West official reporters
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3 Second Memory

GO Clock!!!

By **Bruce Manning**
RG Contributing Editor

When my junior year of high school rolled around I was in trouble in science. I had barely survived my first four years of junior high and high school science and I was running out of options. I had breezed sex ed., for all the good it did me, and they were not about to let me take it again — heck, I hadn't even managed any field work on the matter for which I could get credit. And if that laboratory-free seventh grade science unit was my zenith, the lab-heavy low point of my science career had been the previous year in Honors Chemistry. If it hadn't been for the patient tutelage, and large handwriting, of Ed Nomoto who sat next to me in class, I never would have made it.

My options were AP Biology, AP Chemistry, AP Physics, or just plain Physics. As I saw it: Death, Death, Death and physics, which while not certain death, at the very least involved a long hospital stay. After all, even in Mr. Wells' Phutball Physics

(he was the coach of our terrible team) there were mathematics involved. And I was already working overtime on failing to grasp basic Trig for the second year running.

The school schedule was set up in such a way that there was a weekly double period for each science class which lasted an agonizing 94 minutes and allowed us to experiment with pulleys and carts and harmonic motion. Some weeks, however, there wasn't an experiment to do and so we had the superdread double period lecture.

Mr. Wells knew that his class was full of science rejects but liked us anyway. Eric Dillard, a senior, managed to arrange all of his college interviews for fifth period, thus excusing himself from class. He also managed to interview for every college in the country. Mr. Wells would say "Who is it today Dillard?" to which Eric would reply "Southern Alabama Technical College of Jousting." "Well, good luck Sport," Mr. Wells would say with deep sincerity.

Eventhough Mr. Wells was a sixties holdover and smoked dope in the back of his VW microbus during the lunch hour, he still took exception to Dan Volpe's hair. Dan Volpe (pronounced vol-PAY) played bass in the hot eleventh grade rock outfit and had grown some pretty impressive rock star hair over the past few years. Mr. Wells just called him "Wolfie." As in "Hey, Wolfie, why don't you come up here and explain number six?"

I think we all liked Mr. Wells. It was hard not to as he was just one of the guys. He understood us. One particularly memorable post-lunch Friday double period, in the middle of a particularly long explanation of electromagnetic circuits, on an afternoon that had seemed particularly long and endless already, Mr. Wells

halted his lecture and pointer pointing in mid-word and mid-point. Standing there, mouth partially open, pointer arm slightly extended, Mr. Wells looked at us. We looked at him. We looked at the clock. He looked at us. We looked at him. Seconds passed.

Mr. Wells slowly turned around and looked at the clock above the chalkboard. He crouched down as if he were sitting in a student's desk. He started banging his fists up and down on the invisible desktop. Seconds passed. And then, at the top of his lungs he started chanting, "Go clock go, go clock, go, go clock go!"

He paused, looked at us, and said "Class dismissed," and then he resumed his chant.

Back to the present: I arrived at law school with no choice about which courses I was to take (like me and physics) and I feared them mightily (like me and physics). Class is sometimes too long (like physics) and often people interview with every firm they can to avoid going to class (like Eric Dillard and physics). Just as often, professors affectionately insult/goad students into learning by mangling their names and asking them to do nigh impossible tasks in front of the class (like Dan Volpe/"Wolfie" and physics) and sometimes, lecture drags on and on (like Mr. Wells that Friday double period).

Law professors, however, are not like Mr. Wells (they don't chant "go clock go"). I can't decide if this is a good thing. On the one hand, I never learned any physics and maybe that shouldn't be the case here in law school. On the other hand, most of my professors might be better off if they spent more time, some time, any time at all, in the back of a VW microbus smoking the wacky weed.

The symposium we hear rumors about . . .

Journal for the Reform of the Legal Practice
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Present:

**Making the most of the courtroom experience...
Ideas and strategies for the discriminating litigator**

April 6-7, 1999

University of Michigan Law School
campus in Honolulu, Hawaii

Friday, April 6

11:00-11:10 a.m. Opening Remarks- Welcome from the editors of JRLP
Avoiding Garlic and Beans and Other Ways to Make Friends With Your Jury

11:10-12:30 p.m. Jury Decision-making and Collaboration: Targeting the right juror
An introductory discussion on the methods for choosing jurors who would be interested in financial incentives

1:30-2:30 p.m. Pretrial Prejudice and how to benefit- A panel discussion
"Effective use of character assassination in the media"

2:45-4:15 p.m. Jury Nullification: When confusion counts
Ways to effectively (and legally!) use confusion and histrionics to ruin the jury's concentration and get your client acquitted

4:30 p.m. Keynote Address by Judge Hiller Zobel—Introduction by Dean Jeffrey S. Lehman
The 13th Juror—Handling competition with the jury in an efficient and definitive manner

Saturday, April 7

10:00-11:30 a.m. Jurors 1, 3, 5, 7, and 9 will talk about Jurors 2, 4, 6, and 8 but will not talk about the ongoing case

11:45-12:45 p.m. The Role of Affirmative Action on Jury Panels
Crafty techniques for using preemptory challenges to keep minorities and women
off the jury and not get caught

2:00-3:30 p.m. Complex Litigation and Jury Trials
How to get questionable science and vaguely qualified experts past the judge and before the juries

3:45-5:30 p.m. Jury Reforms: What's Working and What's Not?
Lobbying techniques to keep jury reform out of the legislatures and Congress

RICTA!

BY RICK LEE

Verbiage

If you find any of these offensive, go tell Bill Miller. He'll tell you what to do with your complaint . . . and then some.

"The only Blacks left at Boalt Hall and U-T Austin are dictionaries."

—Law student, expressing concern over admissions changes at law schools

"Don't worry, the *Gourman Report* has us (Michigan Law School) ranked at number two."

—1L, easing anxieties raised by the recent *U.S. News & World Report* rankings

"Since the district judge is not Mr. Spock, he can't get into their minds . . ."

—Prof. T. Sandalow, Constitutional Law

"Pigs can't fly, and that's all there is to it."

—Prof. J. Vining, *E.(i.e.i.)O.*

"Somebody has got to stop these people."

—1L, expressing agitation over brown-nosing students

"Just try to marry your sister . . ."

—Professor to Summer 1L Ken Pippin, explaining some limits on the right to marry

"I didn't know you had all of that corporate experience."

"I don't. I just lied."

—Overheard exchange between students in Room 200

"Why doesn't he just shut up?"

—Student, referring to classmate who repeatedly interrupts the professor

"Larry Sager is a literary genius. He's my hero. He makes law school beautiful."

—1L, defending the *Res Gestae's* creator of "Larry's World"

Please send overheard quotes to rmlee@umich.edu.

2Q Interviews: Quickie Interviews of Busy Law Professors

This week's guest . . . Professor A.W. Brian Simpson

Rick: "Krier's *Property* casebook footnotes that you surveyed the *Keeble v. Hickeringill* duck ponds. What's the most interesting 'case' you've ever visited?"

Simpson: "The site of *Rylands v. Fletcher* because the reservoir is still leaking and I nearly fell down the shaft of the mine, now disused, which it flooded." [You ought to remember this case from Torts. If you've forgotten, go ask Prof. Croley to explain and diagram it with complex matrices.—Rick]

Rick: "Do you travel to these case sites out of scholarly duty, or is this just an odd hobby?"

Simpson: "It's a way of spending my Cook account research money, and it keeps me harmlessly employed when I might otherwise be writing interminable law review articles."

Bonus Question:

Rick: "Have you ever seen a dead cat?"

Simpson: "I was once ordered in the army to shoot a cat with a .45 revolver on the ground that the creature was a health hazard. Being kindly disposed to cats I pursued the unfortunate animal into a bathroom where, no longer under surveillance, I contrived to miss it and shoot a hole in the bath instead. The cat, now like me somewhat deafened, got the message and left, and I was reprimanded by my colonel for military inefficiency."

